

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Southern District of West Virginia

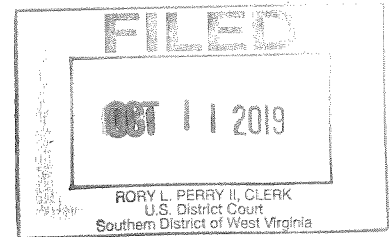
United States of America

v.

Nicholas Elias Boggess

Case No.

2:19-mj-00106



Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of October 6, 2019 in the county of Jackson in the  
Southern District of West Virginia, the defendant(s) violated:

Code Section

26 U.S.C. § 5861(d)

Offense Description

Possession of an Unregistered NFA Weapon, that is, a pipe bomb.

This criminal complaint is based on these facts:

☒ Continued on the attached sheet.

Complainant's signature

Jason J. Berty, SSA ATF

Printed name and title

Sworn to before me and signed in my presence.

Date: 10/10/2019

City and state: Charleston, West Virginia

  
Judge's signature  
Dwane L. Tinsley, United States Magistrate Judge  
Printed name and title

AFFIDAVIT

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, to-wit:

I, Jason J. Berty, being first duly sworn, do hereby depose and state as follows:

1. I am a Senior Special Agent with the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF). I have been so employed since June 2001. As a part of my duties as an ATF Senior Special Agent, I investigate federal criminal violations related to violations of the National Firearms Act. Since August 2017 I have been a Certified Explosives Specialist and since March 2019 I have been a Certified Explosives Specialist Bomb Technician (CESBT). A CESBT's primary responsibility is to support ATF's explosives enforcement mission through active field experience and training. CESBT's identify, evaluate, and naturalize explosive devices.

2. On or about Sunday, October 06, 2019, West Virginia State Police Bomb Technician Trooper Brad Lowe was involved in a traffic stop in Jackson County, West Virginia. The vehicle was stopped for a speeding violation. Upon officers approaching the vehicle, the odor of marijuana was emanating from it. During the stop, it was discovered that the driver and owner of the vehicle, Nicholas Elias BOGGESS, possessed a suspected destructive device, that is, a pipe bomb. The destructive device was removed from a backpack belonging to BOGGESS. The backpack was located in the trunk of the vehicle. BOGGESS spontaneously uttered the backpack was his "Bugout Bag". The suspected destructive device remained in custody of Trooper Lowe and charges were filed in the Magistrate Court of Jackson County, West Virginia.

3. On or about Wednesday, October 09, 2019, Senior Special Agent (SSA) Certified Explosives Specialist Bomb Technician (CESBT) Jason Berty with ATF Charleston, WV, was contacted concerning possible federal prosecution and a criminal complaint for BOGGESS' possession of the suspected destructive device.

4. SSA/CESBT Berty met with Trooper Lowe and several deputies from Kanawha County Sheriff's Department Bomb Squad. The suspected device was photographed and x-rayed and it was successfully rendered safe by remote procedures. The device consisted of a metal pipe with improvised end caps

(approximately 5 ½ inches long by 1 inch in diameter), partially stuffed with what appears to be wadded up cotton and the remainder filled with what appears to be smokeless powder as well as several metallic ball bearings. A piece of green visco fuse, approximately 1 ¼ inches in length, protruded from one of the improvised end caps. A flame susceptibility test was conducted on the suspected gun powder with positive results.

5. Based on my training, knowledge, and experience, this device meets the definition of a destructive device under 26 USC § 5845(f). A laboratory analysis and device determination is to follow by the National Center for Explosives Training and Research (NCETR) located at Huntsville, Alabama. The suspected destructive device, that is an explosive pipe bomb, is not registered under the National Firearms Registration and Transfer Record. The definition of a National Firearms Act (NFA) “firearm” in 26 U.S.C. § 5845(a) includes “destructive device” as specifically defined in §5845(f).

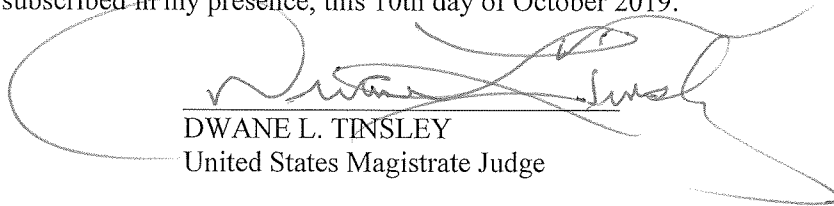
6. Your affiant believes there is probable cause that on October 6, 2019, Nicholas Elias BOGGESS, did receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record, in violation of 26 U.S.C. § 5861(d).

Further, your affiant sayeth naught.



Jason J. Berty, SSA ATF

Sworn to before me, and subscribed in my presence, this 10th day of October 2019.



DWANE L. TINSLEY  
United States Magistrate Judge